

Message Text

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PAGE 01 NEW DE 00180 050719Z

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ACTION L-03

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 8831

AMCONSUL CALCUTTA

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E.O. 11652: N/A

TAGS: CGEN, IN

SUBJECT: CALCUTTA CONSULAR DISTRICT

REF: STATE 196179

SUMMARY: THERE ARE NEW PROBLEMS ON THE SIZE OF THE CALCUTTA CONSULAR DISTRICT AS THE MEA HAS INSISTED PICKERING'S EXEQUATUR AND RESPONSIBILITIES DO NOT EXTEND BEYOND WEST BENGAL, ORISSA, AND BIHAR. WE ARE GOING BACK TO MEA FOR EXPLANATION, RAISING QUESTIONS OF CONSULTATION CALLED FOR BY VIENNA CONVENTION AND OF DISCRIMINATION IN TERMS OF SOVIETS AND EAST GERMANS IN CALCUTTA. WE HAVE SOME OTHER QUESTIONS ON WHICH WE WOULD APPRECIATE YOUR GUIDANCE. END SUMMARY.

1. EMBASSY ON OCTOBER 12, 1973, SENT MEA NOTE ON CALCUTTA CONSULAR DISTRICT IN WHICH OPERATIVE PARAGRAPH READ AS FOLLOWS:

"THE EMBASSY IS PLEASED TO INFORM THE MINISTRY THAT THE EMBASSY WILL RELY ON THE STAFF OF THE AMERICAN CONSULATE GENERAL AT CALCUTTA TO ACT FOR THE UNITED STATES WHEN CONSULAR ACCESS TO THE NORTHEASTERN AREAS OF INDIA IS REQUIRED AND TO HANDLE CORRESPONDENCE AND LIAISON WITH THE STATE GOVERNMENTS IN THAT AREA. THE EMBASSY UNDERSTANDS
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PAGE 02 NEW DE 00180 050719Z

THAT THE AMERICAN CONSULATE GENERAL AT CALCUTTA WILL

ENJOY NO LESS FAVORABLE PRIVILEGES IN THIS REGARD THAN ANY OTHER CONSULAR ESTABLISHMENT AT CALCUTTA."

2. MEA HAS NOW REPLIED WITH NOTE DATED DECEMBER 22 (COPIES POUCHED NEA/INS AND CALCUTTA) IN WHICH OPERATIVE SECTION

IS AS FOLLOWS: "...FOREIGN CONSULAR POSTS IN INDIA ARE EXPECTED TO OPERATE ONLY WITHIN THEIR CONSULAR JURISDICTION AS APPROVED BY THE GOI AND AS DEFINED IN THE EXEQUATUR OF THE HEAD OF THE CONSULAR POST. SINCE THE

CONSULAR JURISDICTION OF MR. PICKERING AS APPROVED BY THE GOI COMPRISES THE STATES OF WEST BENGAL, BIHAR, AND ORISSA, THE US CONSULATE GENERAL AT CALCUTTA IS EXPECTED TO OPERATE AND CORRESPOND WITH THESE THREE STATES ONLY."

3. THE ISSUE IS MADE MURKIER BY THE FACT THAT, DESPITE THE LAST SENTENCE ABOVE, PICKERING AND BURLEIGH WERE GIVEN PERMISSION BY MEA TO VISIT MEGHALAYA IN NOVEMBER (WHICH THEY DID, MEETING EXTENSIVELY WITH STATE OFFICIALS)

AND ASSAM IN DECEMBER (WHICH THEY DID NOT DO FOR SCHEDULING REASONS BUT INTEND TO ATTEMPT AGAIN IN MARCH THIS YEAR). IT IS THUS NOT EVEN CLEAR THAT THE MEA IS COORDINATING WITHIN ITS OWN RANKS HOW TO HANDLE THE QUESTION OF CONSULAR TRAVEL FROM CALCUTTA OR THE EXTENT OF THE CONSULATE GENERAL'S CONSULAR JURISDICTION.

4. ALTHOUGH PICKERING AND HIS STAFF THUS FAR APPEAR TO BE ABLE IN PRACTICE TO TRAVEL IN NORTHEASTERN INDIA, WE DO NOT BELIEVE WE SHOULD SIMPLY LET THE MATTER REST ON THIS PRAGMATIC BASIS. (A) IT WOULD BE TOO EASY FOR THE GOI AT ANY TIME TO TURN OFF ALL TRAVEL AND CITE OUR FAILURE TO TAKE ISSUE WITH THEIR MOST RECENT NOTE; (B)

ACCEPTANCE OF THE GOI POSITION MAY, WE BELIEVE, RAISE POTENTIAL PROBLEMS AS TO THE LEGALITY OF CONSULAR FUNCTIONS EXERCISED BY PICKERING IN ANY OF THE NORTHEASTERN STATES; (C) THE IMPLICIT DENIAL OF THE RIGHT OF CORRESPONDENCE BY THE CONSULATE GENERAL WITH THE GOVERNMENTS OF ANY OF LIMITED OFFICIAL USE

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PAGE 03 NEW DE 00180 050719Z

THE NORTHEASTERN STATES WOULD SEVERELY HAMPER THE CONDUCT OF LEGITIMATE CONSULAR ACTIVITIES, PARTICULARLY PROTECTION OF AMERICAN CITIZENS; AND (D) IT IS DISCRIMINATORY AGAINST THE US AS COMPARED, FOR EXAMPLE, TO THE SOVIET CONGEN IN CALCUTTA AT THE PRESENT TIME. FURTHERMORE, AS REFTEL NOTES, THE ENTIRE CONCEPT OF THE ESTABLISHMENT OF CONSULAR POSTS UNDER THE VIENNA CONVENTION ASSUMES THE PROCESS OF CONSULTATION BETWEEN SENDING AND RECEIVING

POSTS IN ESTABLISHMENT CONSULAR DISTRICTS, NOT A UNILATERAL
AND UNEXPLAINED REDEFINITION BY THE RECEIVING STATE
AS IN THIS CASE.

5. WE WILL, THEREFORE, GO BACK TO THE MEA, INITIALLY AT
THE JOINT SECRETARY LEVEL, AND ASK FOR AN EXPLANATION OF

THE GOI POSITION, RAISING THE ISSUE OF UNILATERAL ACTION

BY THE INDIAN GOVERNMENT, DISCRIMINATORY TREATMENT, AND
POSING THE PRACTICAL PROBLEMS WHICH THE INDIAN POSITION
RAISES FOR THE US. WE WOULD ALSO CONTEMPLATE INFORMING
THE MEA THAT THE EXCLUSION OF THE NORTHEASTERN STATES
WOULD MAKE IT MORE DIFFICULT FOR US NOT ONLY TO PROVIDE
SERVICES FOR US CITIZENS IN THAT AREA BUT ALSO FOR
INDIAN CITIZENS SEEKING VISAS.

6. THE MEA HAS NOT SUGGESTED HOW CONSULAR RESPONSIBILITY
FOR NORTHEAST INDIA MIGHT BE REAPPORTIONED SINCE THEY
HAVE TAKEN IT AWAY FROM CALCUTTA. THEY MAY ASSUME THE

EMBASSY HAS RESIDUAL JURISDICTION. WE DO NOT PROPOSE TO
MAKE ANY SUGGESTION TO THE INDIANS BUT WOULD APPRECIATE
YOUR VIEWS ON THIS.

7. WE WOULD ALSO APPRECIATE YOUR COMMENTS ON THE FEASIBILITY
OF THE USG NOTIFYING THE INDIAN EMBASSY IN WASHINGTON
THAT WE HENCEFORTH WILL RECOGNIZE THE JURISDICTION OF ONE
OF THE INDIAN CONSULATES IN THE US OVER A TRUNCATED PORTION
OF ITS CURRENT JURISDICTION. WE ARE NOT SUGGESTING AT
THIS POINT THAT WE DO THIS, BUT THINK IT IS A FURTHER
OPTION WE SHOULD KEEP IN MIND, PARTICULARLY IF WE DO NOT
GET SATISFACTION FROM THE GOI ON THE ISSUE OF NONDIS-
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PAGE 04 NEW DE 00180 050719Z

CRIMINATORY TREATMENT.
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